

**Panel Discussion on  
Challenges of Operating Installations Across Borders**

# **Legal Framework for ESA Sites and Facilities**

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## Some key figures:

- Over 30 years of experience
- 19 Member States
- Five establishments, about 2000 staff
- 4 billion Euro annual budget (2011)
- Over 60 satellites designed, tested and operated in flight
- 17 scientific satellites in operation
- Five types of launcher developed
- Over 190 launches
- Some 400 Agreements concluded.






## ESA

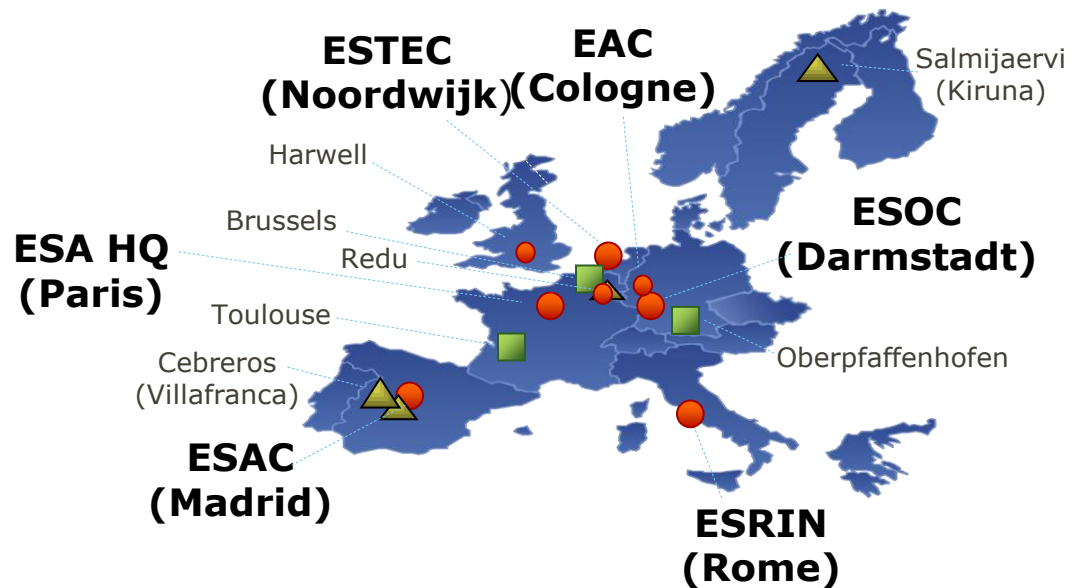
- is an intergovernmental organisation
- governed by the Convention for the establishment of the European Space Agency signed on 30 May 1975 and entered into force on 30 October 1980
- adopts its own Regulations and Rules on the basis of its Convention (e.g. Financial Regulations, Procurement Regulations, Staff Regulations, Security Regulations)
- has in accordance with Article XV. 1 and Article I of Annex I to the ESA Convention legal personality and in particular the capacity to contract, to acquire and dispose of movable and immovable property and to be a party to legal proceedings

## As intergovernmental organisation **ESA**

- is subject to public international law
- is not subject to the national or local law of its Member States *it may however decide to submit itself to them or apply national law on a voluntary basis*
- has immunity from jurisdiction and execution, pursuant to Article IV.1 of Annex I to the ESA Convention, but Council has the duty to waive this immunity in all cases where reliance upon it would impede the course of justice and it can be waived without prejudicing the interests of the Agency.

# ESA - Sites and Facilities (1)

-  ESA sites
-  Offices
-  ESA ground stations



# ESA – Sites and Facilities (2)



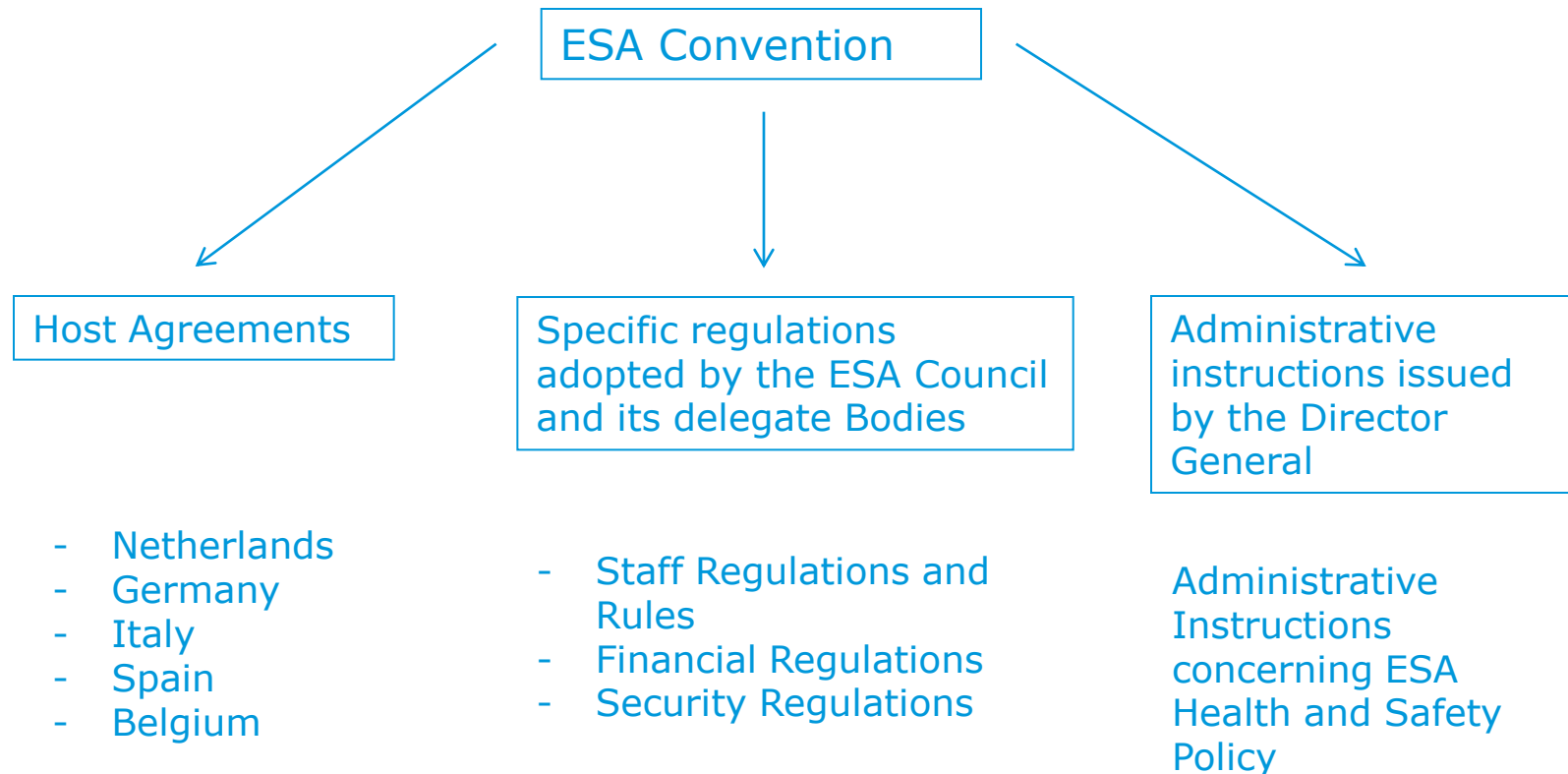
Offices



ESA ground stations



# Relevant Provisions for ESA Sites and Facilities





# Relevant provisions for ESA Sites and Facilities in the Convention (1)



- **Article VI: Facilities and Services**

To execute its programs ESA shall establish and operate such establishments and facilities as required for its activities.

- **Article XV 3: Legal Status, Privileges and Immunities**

Agreements concerning the Headquarters of the Agency and the establishments set up in accordance with Article VI shall be concluded between the Agency and the Member States on whose territories the Headquarters and establishments are situated.

On the basis of this provision ESA has concluded a number of Host Agreements relevant covering the sites located in its Member States

# Relevant provisions for ESA Sites and Facilities in the Convention (2)



## Annex I to the ESA Convention on Privileges and Immunities

- **Article II:** Without prejudice to Articles XXII and XXIII, the buildings and premises of the Agency shall be inviolable.
- **Article III:** The archives of the Agency shall be inviolable.
- **Article XXII:** ESA shall cooperate with the competent authorities of Member States to facilitate the proper administration of justice, ensure the observance of police regulations and regulations concerning explosives, inflammable material, public health, labour inspection or similar national legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in this Annex.
- **Article XXIII:** Each Member State shall retain the right to take all precautionary measures in the interests of its security.

# Relevant provisions for ESA Sites and Facilities in Host Agreements (1)



- On the basis of Article XV.3 of the Convention ESA has concluded Host Agreements with Member States, on whose territories its sites are situated (Netherlands, Germany, Italy, Spain and Belgium).
- These Host Agreements contain provisions on the operation of the sites and rights incidental to ESA's use of the sites, such as:
  - Right to build
  - Right of access to the site
  - Right to install and operate telecommunication systems
  - Commitment of the Host State to issue the necessary permits
- The Host Agreements contain also provisions on the implementation of the privileges and immunities granted to ESA and its staff under Annex I.

# Relevant provisions for ESA Sites and Facilities in Host Agreements (2)



Host Agreements provide in general for:

- the application of national law, for example Article 8 of the Host Agreement concluded 21 February 2008 between ESA and the Netherlands:

*“Without prejudice to the Convention and Annex I thereto, and any relevant complementary agreement between the Government and the Agency, the laws of the Netherlands shall apply within the Premises and to the activities of the Agency carried out on the territory of the Netherlands.”*

- the setting up of a Joint Consultative Committee that shall facilitate the implementation of the Agreement through consultation between the relevant national authorities and the Agency.

# Specific Regulations relevant for ESA Sites and Facilities



- **ESA Staff Regulations**

- Staff Rule 24/1 Responsibility of Establishments:

- (i) *Each Head of Establishment shall draw up and keep up to date special instructions pursuant to Regulation 24 and **shall ensure that they conform with local labour legislation.** Local instructions on industrial health and safety shall be communicated to the Director General, who shall, if necessary, impose common standards to all Establishments of the Agency.*

- **Security Regulations**

- These Regulations contain provisions on the physical security of ESA premises, in order to prevent unauthorised access and to protect ESA's personnel and assets, and information regarding programmes and activities.*

# Administrative Instructions issued by the ESA Director General



## Administrative Instructions issued by the Director General

- The DG is the chief executive officer of the Agency and shall have authority over the establishments of the Agency, Article XII of the ESA Convention
- In this capacity the DG has issued Administrative Instructions concerning ESA Health and Safety Policy, which provide that:
  - The Heads of Establishment are responsible for relations with the administrative authorities of the host country.
  - They are responsible for establishing a suitable site inspection regime with the local authorities responsible for enforcing national legislation in the host country;
  - They shall ensure convergence with the requirements of health and safety legislation in the host country.

# Impact of national law on ESA Sites and Facilities (1)



- Within the ESA Sites and Facilities, national law has to be considered each time, when there is a specific reference in one of the provisions of the ESA legal order (ESA Convention, Host Agreements or ESA Regulations or Administrative Instructions).
- Notably in the fields of:
  - Construction and Real Estate
  - Health and Safety, Labour Inspection
  - Environmental Law and Regulations
- A large part of the personnel working on ESA Sites is employed by ESA contractors under local labour law. This is one (important) reason for ESA's commitment to observe the applicable local rules in the sector of health and safety and environment.

# Impact of national law on ESA Sites and Facilities (2)



ESA commissioned a study to assess its environmental footprint and to make its own operations more sustainable.

Examples of good ESA site practice based on local law requirements:

- *At ESTEC (the Netherlands) the environmental permit has been obtained and renewed. This permit is based on the Environmental Management Act, the centrepiece of Dutch eco-legislation that determines which legal tool can be deployed to protect the environment.*
- *At the Headquarters in Paris the "Dossier Unique" was put in place to register in a single file the significant aspects of Health & Safety and manage on-site risks and prevention plans and environmental concerns, as required by French law.*



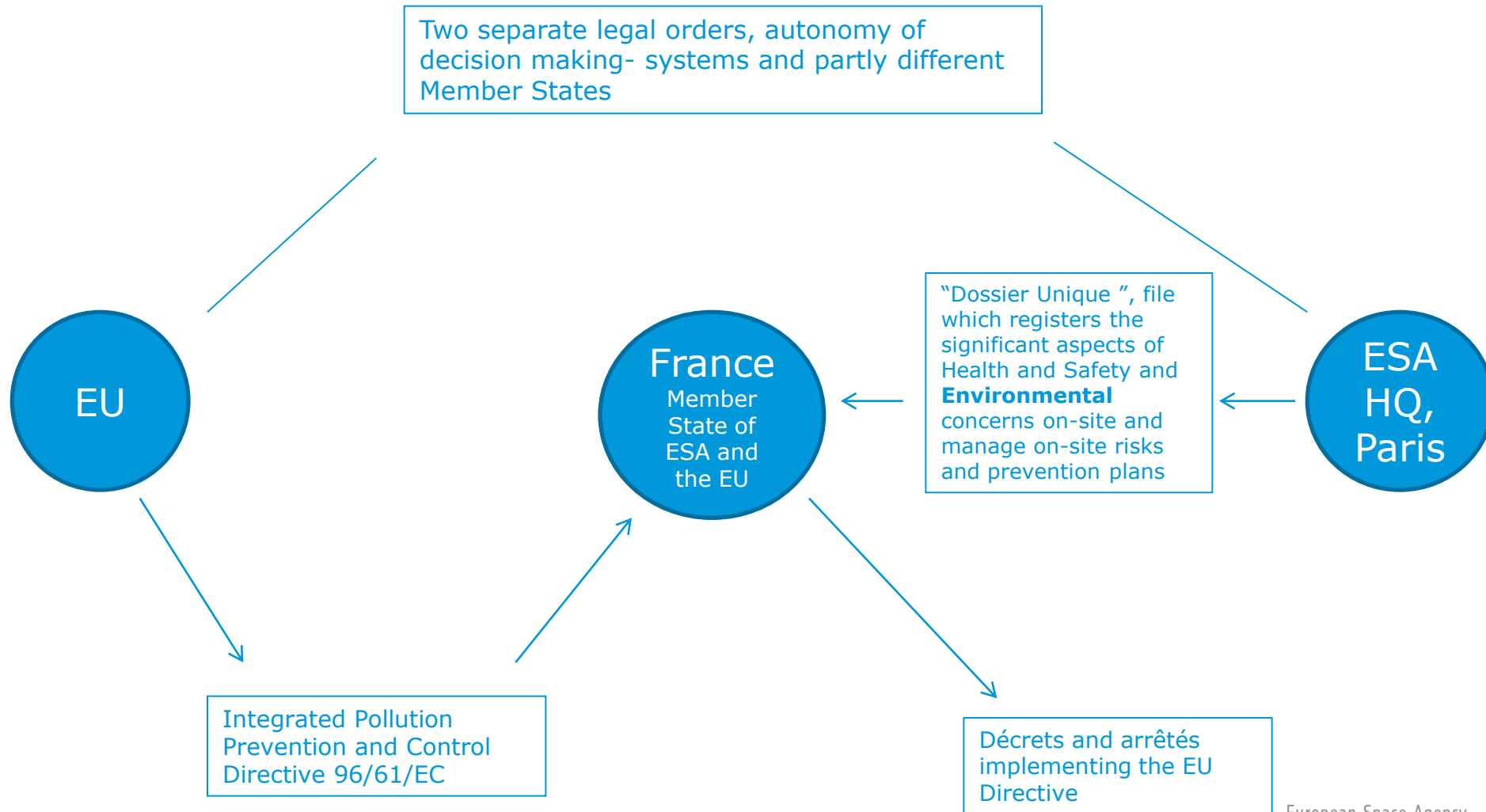
# Impact of EU legislation on ESA Sites and Facilities (1)



- EU Directives are not directly applicable to ESA, but trigger national legislation, to which ESA may commit to conform.
- Various EU Directives concerning the sector on environment:
  - Greenhouse gas emissions (2009/29/EC)
  - Environmental assessment (2001/42/EC)
  - Environmental liability (2004/35/CE)

Example: The Integrated Pollution Prevention and Control Directive (96/61/EC amended by the Directive 2008/1/EC) requires an integrated approach to the environmental protection of air, water and land, through the application of Best Available Techniques (BAT), establishing operating conditions (eg emission limit values) in permits.

# Impact of EU legislation on ESA Sites and Facilities (2)



- In the sector of environment and health and safety ESA makes all efforts to apply, on a voluntary basis, best practices applicable in its Member States.
- ESA's commitment to observe national environmental laws and best practices is based on its obligation to cooperate with the national authorities and cannot be unilaterally enforced by the national authorities.
- The general legal principle according to which ESA as an intergovernmental organisation is not subject to national law is not strictly applied in the above mentioned sectors.